

CENTER FOR DISABILITY ACCESS  
Amanda Seabock, Esq., SBN 289900  
Chris Carson, Esq., SBN 280048  
Dennis Price, Esq., SBN 279082  
Mail: PO Box 262490  
San Diego, CA 92196-2490  
Delivery: 9845 Erma Road, Suite 300  
San Diego, CA 92131  
(858) 375-7385; (888) 422-5191 fax  
[amandas@potterhandy.com](mailto:amandas@potterhandy.com)

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Oziel Sawyer III,**

Plaintiff,

v.

**San Francisco Bay Area  
Properties II, LLC**, a California  
Limited Liability Company; and  
Does 1-10,

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Oziel Sawyer III complains of San Francisco Bay Area Properties II, LLC, a California Limited Liability Company; and Does 1-10 ("Defendants"), and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is paralyzed, cannot walk and uses a wheelchair for mobility.

2. Defendant San Francisco Bay Area Properties II, LLC owned the real property located at or about 22291 Redwood Rd., Castro Valley, California, in

1 March 2019.

2 3. Defendant San Francisco Bay Area Properties II, LLC owns the real  
3 property located at or about 22291 Redwood Rd., Castro Valley, California,  
4 currently.

5 4. Plaintiff does not know the true names of Defendants, their business  
6 capacities, their ownership connection to the property and business, or their  
7 relative responsibilities in causing the access violations herein complained of,  
8 and alleges a joint venture and common enterprise by all such Defendants.  
9 Plaintiff is informed and believes that each of the Defendants herein,  
10 including Does 1 through 10, inclusive, is responsible in some capacity for the  
11 events herein alleged, or is a necessary party for obtaining appropriate relief.  
12 Plaintiff will seek leave to amend when the true names, capacities,  
13 connections, and responsibilities of the Defendants and Does 1 through 10,  
14 inclusive, are ascertained.

15  
16 **JURISDICTION & VENUE:**

17 5. The Court has subject matter jurisdiction over the action pursuant to 28  
18 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
19 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

20 6. Pursuant to supplemental jurisdiction, an attendant and related cause  
21 of action, arising from the same nucleus of operative facts and arising out of  
22 the same transactions, is also brought under California's Unruh Civil Rights  
23 Act, which act expressly incorporates the Americans with Disabilities Act.

24 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
25 founded on the fact that the real property which is the subject of this action is  
26 located in this district and that Plaintiff's cause of action arose in this district.

**FACTUAL ALLEGATIONS:**

8. Plaintiff went to the property to visit El Rancho Supermercado (“Store”) in March 2019 with the intention to avail himself of its goods or services and to assess the business for compliance with the disability access laws.

9. The Store is a facility open to the public, a place of public accommodation, and a business establishment.

10. Parking spaces are one of the facilities, privileges, and advantages offered by Defendants to patrons of the Store.

11. Unfortunately, on the date of the plaintiff’s visit, the defendants did not provide accessible parking in conformance with the ADA Standards.<sup>1</sup>

12. Currently, the defendants do not provide accessible parking in conformance with the ADA Standards.

13. Plaintiff personally encountered this barrier.

14. By failing to provide accessible parking, the defendants denied the plaintiff full and equal access.

15. The lack of accessible parking created difficulty and discomfort for the Plaintiff.

16. The defendants have failed to maintain in working and useable conditions those features required to provide ready access to persons with disabilities.

17. The barriers identified above are easily removed without much difficulty or expense. They are the types of barriers identified by the Department of Justice as presumably readily achievable to remove and, in fact, these barriers are readily achievable to remove. Moreover, there are numerous alternative accommodations that could be made to provide a greater level of

---

<sup>1</sup> For example, the parking stalls ostensibly reserved for persons with disabilities were not accompanied by access aisles. On information and belief there are other issues with the parking that render it non-compliant. Those issues will be fleshed out in discovery and inspections. The plaintiff seeks to have fully compliant parking provided.

1 access if complete removal were not achievable.

2 18. Plaintiff will return to the Store to avail himself of goods or services and  
3 to determine compliance with the disability access laws once it is represented  
4 to him that the Store and its facilities are accessible. Plaintiff is currently  
5 deterred from doing so because of his knowledge of the existing barriers and  
6 his uncertainty about the existence of yet other barriers on the site. If the  
7 barriers are not removed, the plaintiff will face unlawful and discriminatory  
8 barriers again.

9 19. Given the obvious and blatant nature of the barriers and violations  
10 alleged herein, the plaintiff alleges, on information and belief, that there are  
11 other violations and barriers on the site that relate to his disability. Plaintiff will  
12 amend the complaint, to provide proper notice regarding the scope of this  
13 lawsuit, once he conducts a site inspection. However, please be on notice that  
14 the plaintiff seeks to have all barriers related to his disability remedied. See  
15 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
16 encounters one barrier at a site, he can sue to have all barriers that relate to his  
17 disability removed regardless of whether he personally encountered them).

18  
19 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
20 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
21 Defendants.) (42 U.S.C. section 12101, et seq.)

22 20. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
23 again herein, the allegations contained in all prior paragraphs of this  
24 complaint.

25 21. Under the ADA, it is an act of discrimination to fail to ensure that the  
26 privileges, advantages, accommodations, facilities, goods and services of any  
27 place of public accommodation is offered on a full and equal basis by anyone  
28 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.

1 § 12182(a). Discrimination is defined, inter alia, as follows:

- 2 a. A failure to make reasonable modifications in policies, practices,  
3 or procedures, when such modifications are necessary to afford  
4 goods, services, facilities, privileges, advantages, or  
5 accommodations to individuals with disabilities, unless the  
6 accommodation would work a fundamental alteration of those  
7 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 8 b. A failure to remove architectural barriers where such removal is  
9 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
10 defined by reference to the ADA Standards.
- 11 c. A failure to make alterations in such a manner that, to the  
12 maximum extent feasible, the altered portions of the facility are  
13 readily accessible to and usable by individuals with disabilities,  
14 including individuals who use wheelchairs or to ensure that, to the  
15 maximum extent feasible, the path of travel to the altered area and  
16 the bathrooms, telephones, and drinking fountains serving the  
17 altered area, are readily accessible to and usable by individuals  
18 with disabilities. 42 U.S.C. § 12183(a)(2).

19 22. When a business provides parking for its customers, it must provide  
20 accessible parking in compliance with the ADA Standards.

21 23. Here, the lack of accessible parking in compliance with the ADA  
22 Standards is a violation of the law.

23 24. The Safe Harbor provisions of the 2010 Standards are not applicable  
24 here because the conditions challenged in this lawsuit do not comply with the  
25 1991 Standards.

26 25. A public accommodation must maintain in operable working condition  
27 those features of its facilities and equipment that are required to be readily  
28 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

1       26. Here, the failure to ensure that the accessible facilities were available  
2 and ready to be used by the plaintiff is a violation of the law.

3  
4       **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
5       **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
6 Code § 51-53.)

7       27. Plaintiff repleads and incorporates by reference, as if fully set forth  
8 again herein, the allegations contained in all prior paragraphs of this  
9 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
10 that persons with disabilities are entitled to full and equal accommodations,  
11 advantages, facilities, privileges, or services in all business establishment of  
12 every kind whatsoever within the jurisdiction of the State of California. Cal.  
13 Civ. Code §51(b).

14       28. The Unruh Act provides that a violation of the ADA is a violation of the  
15 Unruh Act. Cal. Civ. Code, § 51(f).

16       29. Defendants’ acts and omissions, as herein alleged, have violated the  
17 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
18 rights to full and equal use of the accommodations, advantages, facilities,  
19 privileges, or services offered.

20       30. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
21 discomfort or embarrassment for the plaintiff, the defendants are also each  
22 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
23 (c).)

1           **PRAYER:**

2           Wherefore, Plaintiff prays that this Court award damages and provide  
3 relief as follows:

4           1. For injunctive relief, compelling Defendants to comply with the  
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
6 plaintiff is not invoking section 55 of the California Civil Code and is not  
7 seeking injunctive relief under the Disabled Persons Act at all.

8           2. Damages under the Unruh Civil Rights Act, which provides for actual  
9 damages and a statutory minimum of \$4,000 for each offense.

10          3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
11 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

12  
13 Dated: April 3, 2019

CENTER FOR DISABILITY ACCESS

14  
15 By: 

16  
17 \_\_\_\_\_  
18 Amanda Seabock, Esq.  
19 Attorney for plaintiff  
20  
21  
22  
23  
24  
25  
26  
27  
28